corruption agency officers walked in, she was recorded as saying that she could not remember whether he was standing or sitting. She was then too occupied with her work to notice. What she told the court was to the effect that the accused was seated. This was apparently contrary to what other witnesses said.

I do not know what would be the effect on the case for the prosecution if she had been allowed to finish her examination or to be cross-examined. But now the defence complained that if her credit could have been saved by being so allowed, the defence might have been able to cast a doubt on the truth of the evidence of the other witnesses. It would not be quite right for me to speculate, at this stage, how valid such an objection would be, but clearly the defence should at all times be allowed the opportunity of defending within our well-established principles of adversary trial as against the inquisitorial system, and where there is *prima facie* a valid complaint, however thin it might be, it must in my view be entertained.

On this ground, Dato' Seenivasagam did not seriously contend for an acquittal. It is not necessary for me to hear the other grounds. There will therefore be an order quashing the conviction and setting aside the sentence and a further order for a retrial before another president.

Conviction quashed. Retrial ordered.

Solicitors: *S. Seenivasagam & Sons.*

RE L. Y. SWEE CO. SDN. BHD.

[O.C.J. (Abdul Hamid J.) January 26, 1970]

[Kuala Lumpur — Companies (Winding-up) No. 10 of 1969]

Companies — Winding-up — Petition for — Appointment of counsel to represent company — Objection to — Directors' meeting — Minutes of, not entered in company's minute book — Companies Act, 1965, s. 156.

Companies — Private company — Directors — Meeting held in branch office outside State where registered office is situated — Whether valid — Companies Act, 1965, s. 145A.

The company, a private limited company having its registered office in Kuala Lumpur and a branch office in Penang, has three directors. The petitioner is a director in Kuala Lumpur. The other two are directors in the branch office. The petition for winding-up was filed on October 16, 1969. The two Penang directors held a directors' meeting at Penang office on December 4, 1969 and appointed Mr. M.J. Mathew solicitor for the company. A preliminary objection was raised to Mr. Mathew appearing on behalf of the company at the hearing of the petition on two grounds: (1) The directors' meeting was not valid as it was held outside Selangor, the State where the registered office is situated. In support of this the petitioner relied on section 145A of the Companies Act. (2) The minutes of the meeting were not entered in the company's minute book which was kept by the company at its registered office.

Held: (1) the words "any meeting" in section 145A do not apply to a meeting of the directors of a company but only to general meetings;

(2) as the minutes of the directors' meeting had not been entered into the company's minute book within 14 days of the meeting, there was a contravention of section 156, and therefore the appointment of Mr. Mathew could not be deemed valid.

COMPANIES WINDING-UP.

Chye Kooi Tet for the petitioner.

M. J. Mathew for the company.

Abdul Hamid J.: At the hearing of the petition of Khoo Leong Kee (f) that L. Y. Swee Company Sdn. Bhd. be wound up under the provisions of the Companies Act, 1965, Mr. Chye Kooi Tet, counsel for the petitioner raised a preliminary objection to Mr. M. J. Mathew appearing on behalf of the company.

Mr. Law Joo Kuen, a director of L. Y. Swee Company Sdn. Bhd. filed a memorandum of retainer on 15th December 1969 stating that

"Mr. M. J. Mathew has been appointed by Messrs. L. Y. Swee Company Sdn. Bhd. abovenamed to act on its behalf in the proceedings."

The company is a private limited company. The registered office is situate at No. 74, Jalan Pudu, Kuala Lumpur. It has a branch office at No. 2 and 4, Che Em Lane, Penang.

There are three directors of the company. The petitioner is a director in the registered office in Kuala Lumpur, while Law Joo Kuen and Law Joo Hone are directors in the branch office in Penang.

The petition was filed on 16th October 1969. On 4th December 1969, the two Penang directors held a directors' meeting at Penang office. The petitioner was absent. At this meeting, Mr. M. J. Mathew was appointed solicitor for the company.

An affidavit was filed by the petitioner on 29th December 1969 objecting to the appointment of Mr. Mathew. Another affidavit was filed by one Chiew Keng, secretary of L. Y. Swee Co. Sdn. Bhd. on 31st December 1969, affirming that a meeting was held outside the State of Selangor and that the minutes of the aforesaid meeting were not entered in the company's minute book which is kept by the company in the registered office at Kuala Lumpur. A counter affidavit was filed by Law Joo Kuen, one of the Penang directors denying that there was any irregularity in the appointment.

Mr. Chye Kooi Tet is relying on two grounds in support of his objection —

(a) that the directors' meeting was not valid as it was held outside the State of Selangor, the State where the registered office is situated;

(b) that the minutes of the meeting were not and have not as yet been entered in the company's minute book which is kept by the company at the registered office.

Mr. Chye Kooi Tet refers to section 145A of the Act in support of his first ground. Section 145A is a new section added by Act 21 of 1969 which came into effect on 23rd March 1969. It reads —

"145A. Where any meeting (including an adjourned meeting) is required to be held under this division it shall be held in the State (of the Federation) where its registered office is situated."

The question which the court has to determine is the effect of this new section. Does it apply to any meet-

ing, including a meeting of the board of directors? Applying the ordinary construction, and by looking at this section alone it appears as though it does. However, after examining the scope and effect of other provisions under this division, I am inclined to think that it was not envisaged by the legislature that the amendment should apply to a meeting of the board of directors. It is unfortunate that the explanatory statement appended to the Bill is equally vague and has not thrown any light as to the real effect of this section.

The section refers to "any meeting" to be held under the division, namely Division 3 of Part V. The word "meeting" is nowhere defined in the Act. Section 4, however, defines "annual general meeting" to mean a meeting of the company required to be held by section 143. Section 142 relates to statutory meeting, section 144 to extraordinary annual general meeting, and section 145 to company meeting. Sections 146 to 157, except sections 154 and 156, all contain provisions relating to and connected with general meetings of a company. Section 154 deals with registration and copies of certain resolutions and agreements, and section 156 deals with minutes of proceedings.

Provisions governing meetings of directors of a company are ordinarily provided in the articles of association of a company. Companies which do not have articles of association may by virtue of section 30(1) of the Companies Act, adopt all or any of the regulations contained in Table A of the 4th Schedule of the Act, such as to be found under regulations 79 to 90.

At page 543, *Palmer's* Company Law, 20th edition, the author touching upon the proceedings the directors have to adopt when managing and administering the affairs of the company under the heading of "board meetings" states —

"At meetings of directors the proceedings are governed by the company's articles and by any rules made by the directors themselves by virtue of powers given them by the articles.

The articles usually provide that the directors may conduct their proceedings as they think fit. Typical in this respect is art. 98 which provides that 'the directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit' ".

Article 98 is somewhat similar to regulation 79 under Table A of the 4th Schedule of our Act which reads —

"The directors may meet together for the dispatch of business adjourn and otherwise regulate their meetings as they think fit."

After examining the scope and effect of other provisions under Division 3, Part V, I am of the opinion that the words "any meeting" in section 145A of the Act, do not refer to a meeting of the directors of a company but only to general meetings.

The second ground raised by Mr. Chye Kooi Tet is that minutes of the aforesaid meeting of the directors on 4th December 1969 were not entered in the company's minute book. Section 156 of the Act (equivalent to section 145 of the English Companies Act, 1948) reads —

"156. (1) Every company shall cause —

(a) minutes of all proceedings of general meetings and of meetings of its directors and of its managers (if any) to be entered in books kept for that purpose within fourteen days of the date upon which the relevant meeting was held; and

(b) those minutes to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting.

(2) Any minute so entered that purports to be signed as provided in sub-section (1) of this section shall be evidence of the proceedings to which it relates.

(3) Where minutes have been so entered and signed, then, until the contrary is proved—

(a) the meeting shall be deemed to have been duly held and convened;

(b) all proceedings had thereat shall be deemed to have been duly had; and

(c) all appointments of officers or liquidators made thereat shall be deemed to be valid.

(4) If default is made in complying with this section the company and every officer of the company who is in default shall be guilty of an offence against this act.

Penalty: Five hundred dollars. Default penalty."

Palmer's Company Law same edition at p. 547 referring to section 145(1) of the Companies Act, 1948 states —

"It is not, however, essential for the validity of a director's resolution that the determination should be embodied in a formal resolution, and the minutes in recording it often, in fact, enter only the substance, *e.g.*, 'a contract with A B for the supply of.... was submitted and approved.' It is, however, necessary to enter minutes of all directors' proceedings in a book kept for the purpose [s. 145 (1)]."

And on p. 489, it states —

"Where the minutes have been properly made and signed, a rebuttable presumption arises that the meeting to which they refer, whether a general meeting or a board meeting has been duly held and convened, all proceedings at it have been duly had, and all appointments of directors, managers or liquidators made at the meeting are presumed to be valid [s. 145 (3)]. The protection as well as the convenience afforded to a company by these privileges is very great, and the utmost care should be used to keep the minutes in correct form and to make them complete."

In the present case, the affidavit affirmed by Law Joo Kuen has not challenged the secretary's affidavit alleging that the minutes of the meeting held on 4th December 1969 were not entered in the company's book which is kept by the company at the registered office, Kuala Lumpur, and that the same have as yet to be entered therein.

Section 156 stipulates that the meeting shall be deemed to have been duly held and convened and that all proceedings had thereat shall be deemed to be duly had and that all appointments of officers etc. made thereat shall be deemed to be valid where the minutes have been entered in the books kept for that purpose, within 14 days of the date upon which the relevant meeting was held. In the instant case this was not done. There is therefore a contravention of section 156 of the Act, in this case, one of the preconditions essential to raise a presumption of a valid appointment has not been satisfied. The appointment cannot therefore be deemed to be valid.

For these reasons, I hold that Mr. M. J. Mathew cannot appear for and on behalf of the L. Y. Swee Co. Sdn. Bhd.

Order accordingly.

Solicitors: *Chye, Chow, Chung, Teng & Co.*